

ATTACHMENT A

Declaration of J. Patrick Hunter

I, J. Patrick Hunter, being of legal age declare as follows:

1. I am an attorney with the Southern Environmental Law Center. I and/or my firm have represented petitioners in each of the cases discussed below with the exception of paragraph 27. Each case is related to a permit necessary to construct the Atlantic Coast Pipeline along its current route.
2. As of the date of this declaration, and as explained in detail below, the Atlantic Coast Pipeline is currently without as many as three federal permits necessary for construction along its current route. It is unlikely to obtain one or more of those permits within the next 90 to 180 days given the current scheduling for review of pending legal challenges. A fourth permit is currently stayed pending review.
3. In January 2018, we petitioned the United States Court of Appeals for the Fourth Circuit for review of the right-of-way permit issued by the National Park Service for the Atlantic Coast Pipeline to bore beneath Blue Ridge Parkway lands, and for review of the Fish and Wildlife Service's Incidental Take Statement which was part of its Biological Opinion issued for the pipeline. Review of those permits was directly in the Court of Appeals pursuant to the Natural Gas Act, 15 U.S.C. § 717r(d).

4. On August 6, 2018, the Fourth Circuit issued a consolidated opinion vacating the National Park Service's and the Fish and Wildlife Service's approvals for the pipeline. The opinion is available at *Sierra Club v. United States Dep't of the Interior*, 899 F.3d 260 (4th Cir. 2018).
5. According to condition No. 10 of the Federal Energy Regulatory Commission's Certificate of Public Convenience and Necessity for the project, "Atlantic . . . must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof)" before construction can commence.
6. In its opinion in *Sierra Club*, the Fourth Circuit found that "FERC's authorization for ACP to begin construction is conditioned on the existence of valid authorizations from both FWS and NPS. Absent such authorizations, ACP, should it continue to proceed with construction, would violate FERC's certificate of public convenience and necessity." *Sierra Club*, 899 F.3d at 285 n 11.
7. Four days after the Fourth Circuit issued its opinion vacating Park Service and Fish and Wildlife Service approvals, the Federal Energy Regulatory Commission issued a stop-work order on the entire project, pointing out that "Atlantic Coast Pipeline, LLC (Atlantic) has not obtained the rights-of-way and temporary use permits from the NPS needed for ACP to cross

certain federally owned lands and lacks an Incidental Take Statement for the project.” FERC further stated that “allowing continued construction poses the risk of expending substantial resources and substantially disturbing the environment by constructing facilities that ultimately might have to be relocated or abandoned.” FERC’s August 10, 2018, stop-work order was posted to its publicly accessible online docket (FERC eLibrary No. 20180810-4011) and a true and accurate copy is attached to this declaration as **Exhibit A**.

8. The National Park Service issued a new right of way for the project on September 14, 2018. The Fish and Wildlife Service issued a new Biological Opinion and Incidental Take Statement for the project on September 11, 2018.
9. FERC lifted its stop-work order, allowing tree-felling and construction to resume along certain portions of the route, on September 17, 2018 (FERC eLibrary No. 20180917-3025).
10. On September 19, 2018, we petitioned the United States Court of Appeals for the Fourth Circuit for review of the reissued approvals for the pipeline from both the National Park Service and Fish and Wildlife Service.
11. We also sought a stay of another federal approval under review by the Fourth Circuit, discussed further below.

12. On December 7, 2018, the Fourth Circuit stayed implementation of the Fish and Wildlife Service's Biological Opinion and Incidental Take Statement pending review. The Court's order is attached to this declaration as **Exhibit B**.
13. That same day, Atlantic Coast Pipeline, LLC, wrote FERC informing it that "[i]n response to a stay of implementation of the U.S. Fish and Wildlife Service's 2018 Biological Opinion and Incidental Take Statement granted today by the U.S. Court of Appeals for the Fourth Circuit, Dominion Energy, on behalf of Atlantic and itself, has stopped construction on the entire Project." Atlantic's letter was posted to FERC's publicly accessible online docket and a true and accurate copy is attached to this declaration as **Exhibit C**.
14. The stay of the Biological Opinion and Incidental Take Statement pending review is still in place. The Fourth Circuit heard argument on May 9, 2019. To my knowledge, Atlantic has not lifted its voluntary stay, and it continues to seek FERC's permission for activities it calls "stabilization" while the voluntary stop work is in effect.
15. On January 16, 2019, the National Park Service moved for a voluntary remand in order to vacate its right of way for the Atlantic Coast Pipeline. The Fourth Circuit granted the request on January 23, 2019. The National

Park Service has not reissued a right-of-way permit for the project to cross the Blue Ridge Parkway.

16. We also petitioned the United States Court of Appeals for the Fourth Circuit for review of approvals issued for the Atlantic Coast Pipeline by the United States Forest Service to cross national forest lands and the Appalachian Trail. We sought review on February 5, 2018.
17. The day after FERC lifted its stop work order on September 17, 2018, we sought a stay pending review for the Forest Service approvals on September 18, 2018. The Court granted the stay on September 24, 2018.
18. On December 13, 2018, the Fourth Circuit vacated and remanded the Forest Service's approvals.
19. On remand the Forest Service must determine "whether the ACP project's needs can be reasonably met on non-national forest lands." *Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150, 169 (4th Cir. 2018). The current route crosses approximately 21 miles of national forest lands. Avoiding national forest lands would require a reroute.
20. In its approval for the project, the Forest Service relied on the Mineral Leasing Act to grant a right of way across the Appalachian Trail on national forest lands, but the Fourth Circuit found "that Forest Service does

not have statutory authority to grant pipeline rights of way across the [Appalachian Trail] pursuant the [Mineral Leasing Act].” *Id.* at 181.

21. The parties in *Cowpasture* did not dispute that the National Park Service also lacked statutory authority under the Mineral Leasing Act to issue a right of way across the Appalachian Trail, which is a unit of the National Park System. No federal agency currently has statutory authority to issue a gas pipeline right of way across the Appalachian Trail pursuant to the Mineral Leasing Act at the location determined by the current route for the Atlantic Coast Pipeline.
22. On January 28, 2019, Atlantic Coast Pipeline petitioned the Fourth Circuit for rehearing of the *Cowpasture* case. On February 11, 2019, the Forest Service petitioned for rehearing.
23. Both petitions were denied by the Fourth Circuit on February 25, 2019.
24. On May 15, 2019, both Atlantic Coast Pipeline, LLC, and the Forest Service requested an extension of time to file a petition for writ of certiorari before the United States Supreme Court until June 25, 2019. On May 16, 2019, those requests were granted.
25. The Atlantic Coast Pipeline currently lacks permits from the Forest Service and National Park Service. Approvals from the Fish and Wildlife Service are currently stayed.

26. The FERC Certificate of Public Convenience and Necessity for the project is also under review before the United States Court of Appeals for the D.C. Circuit. Argument in that case has not been calendared.
27. My firm has not been involved in litigation over Clean Water Act Section 404 permits issued for the project by the Army Corps of Engineers but I understand the project also currently lacks Section 404 permits.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed this the 24 day of May, 2019.


J. Patrick Hunter

Subscribed and sworn to before me, a notary public, this the 24 day of May, 2019.

My commission expires: 1-31-2020.

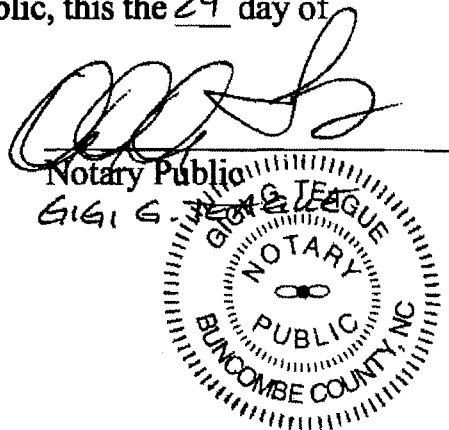


Exhibit A

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:

OEP/DG2E/Gas Branch 4
Atlantic Coast Pipeline, LLC
Atlantic Coast Pipeline
Dominion Energy Transmission, Inc.
Supply Header Project
Docket Nos. CP15-554-000,
CP15-554-001, and CP15-555-000

August 10, 2018

Mr. Matthew R. Bley
Director, Gas Transmission Certificates
Dominion Energy Transmission, Inc.
707 East Main Street
Richmond, VA 23219

Re: Notification of Stop Work Order

Dear Mr. Bley:

On August 6, 2018, the United States Court of Appeals for the Fourth Circuit issued an order vacating a right-of-way-permit by the Department of the Interior's National Park Service (NPS) authorizing the construction of the Atlantic Coast Pipeline (ACP) across the Blue Ridge Parkway and providing detailed reasoning for its May 15, 2018 order vacating the Incidental Take Statement issued by the U.S. Fish and Wildlife Service (FWS) with respect to the project. In light of this development, Atlantic Coast Pipeline, LLC (Atlantic) has not obtained the rights-of-way and temporary use permits from the NPS needed for ACP to cross certain federally owned lands and lacks an Incidental Take Statement for the project.

There is no reason to believe that the NPS, as the land managing agency, will not be able to comply with the Court's instructions and to ultimately issue a new right-of-way grant that satisfies the Court's requirements, or that FWS will not be able to issue an Incidental Take Statement that does likewise. However, Commission staff cannot predict when NPS or FWS may act or whether NPS will ultimately approve the same route. Should NPS authorize an alternative crossing location, Atlantic may need to revise substantial portions of the ACP route across non-federal or federal lands, possibly requiring further authorizations and environmental review. Accordingly, allowing

continued construction poses the risk of expending substantial resources and substantially disturbing the environment by constructing facilities that ultimately might have to be relocated or abandoned.

Atlantic and Dominion Energy Transmission, Inc. (DETI) are hereby notified that construction activity along all portions of the ACP and Supply Header Project and in all work areas must cease immediately, with the exception of any measures deemed necessary by appropriate agencies such as NPS and the U.S. Forest Service, or by FERC staff to ensure the stabilization of the right-of-way and work areas.

Within 5 days, Atlantic and DETI must provide an interim right-of-way and work area stabilization plan for review and written approval by the Director of the Office of Energy Projects or his designee. In addition, should Atlantic and DETI believe that any portions of the project, other than the Blue Ridge Parkway Crossing and areas in which species or habitat covered by the Incidental Take Statement are present, have independent utility such that they can provide service in the absence of portions of the project in the areas described above, they may, within 3 days, file supporting information to that effect with the Commission.

Commission staff intends to review the need for this stop work notification in light of further actions that the NPS or FWS will take with respect to the issues raised in the Court's opinion and information provided by Atlantic and DETI, and stand ready to assist to achieve a prompt resolution.

Sincerely,

Terry L. Turpin,
Director,
Office of Energy Projects

cc: Docket Nos. CP15-554-000, CP15-554-001, and CP15-555-000

Document Content(s)

2018-08-10 ACP Letter.PDF.....1-2

Exhibit B

FILED: December 7, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2090
(CP15-554-000)
(CP15-554-001)
(CP15-555-000)

DEFENDERS OF WILDLIFE; SIERRA CLUB; VIRGINIA WILDERNESS
COMMITTEE

Petitioners

v.

UNITED STATES DEPARTMENT OF THE INTERIOR; UNITED STATES
FISH AND WILDLIFE SERVICE, an agency of the U.S. Department of the
Interior; JIM KURTH, in his official capacity as Acting Director; PAUL PHIFER,
in his official capacity as Assistant Regional Director, Ecological Services,
Responsible Official

Respondents

ATLANTIC COAST PIPELINE LLC

Intervenor

O R D E R

Upon consideration of the submissions relative to petitioners' motion to stay, the court grants the motion and stays implementation of the Fish and Wildlife Service's 2018 Biological Opinion and Incidental Take Statement pending review by the court.

Entered at the direction of Chief Judge Gregory with the concurrence of Judge Wynn and Judge Thacker.

For the Court

/s/ Patricia S. Connor, Clerk

Exhibit C

December 7, 2018

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Atlantic Coast Pipeline, LLC & Dominion Energy Transmission, Inc.
Atlantic Coast Pipeline & Supply Header Projects
Docket Nos. CP15-554-000, CP15-554-001, & CP15-555-000
Supplemental Information**

Dear Secretary Bose:

By Order dated October 13, 2017, the Federal Energy Regulatory Commission (Commission or FERC) authorized Atlantic Coast Pipeline, LLC (Atlantic) and Dominion Energy Transmission, Inc.¹ (DETI or "Dominion Energy") to construct and operate certain facilities that comprise the Atlantic Coast Pipeline and Supply Header Projects (Projects). *Atlantic Coast Pipeline, LLC & Dominion Energy Transmission, Inc.* 161 FERC ¶ 61,042 (the "Order").

In response to a stay of implementation of the U.S. Fish and Wildlife Service's 2018 Biological Opinion and Incidental Take Statement granted today by the U.S. Court of Appeals for the Fourth Circuit, Dominion Energy, on behalf of Atlantic and itself, has stopped construction on the entire Projects, except for stand-down activities needed for safety and that are necessary to prevent detriment to the environment.

If you have any questions, please contact me at 866-319-3382.

Respectfully submitted,

/s/ *Matthew R. Bley*

Matthew R. Bley
Director Gas Transmission Certificates

cc: Mr. Kevin Bowman, FERC
Mr. David Swearingen, FERC
Mr. John Wood, FERC

¹ On May 12, 2017, Dominion Transmission, Inc. changed its name to Dominion Energy Transmission, Inc.